IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2634 OF 2005

Shri Ashok S. Khaire .. ..Petitioner

Versus

M/s. Bombay Hospital Trust .. ..Respondent

Mr.M.D.Nagle for petitioner

Mr.C.U.Singh with Mahesh Londhe i/b Sanjay Udeshi and Co. for respondent

CORAM : P.V.KAKADE, J.

DATE : 14TH NOVEMBER,2005

P.C.:

1. Heard the learned counsel for both the parties.

2. By this Petition the petitioner has sought quashing and setting aside of the impugned Awards dated 19.11.2003 and 9.3.2005 respectively and further sought direction for the respondent to reinstate the petitioner

with continuity of service and with full back wages with effect from 20.3.1993 with all consequential benefits and to further hold that the enquiry conducted against the petitioner was not legal, fair and proper and reports and findings of the Enquiry Officer were totally perverse by quashing and setting aside the Award dated 19.11.2003.

3. The Petitioner along with two others were jointly chargesheeted for commission of theft. The Petitioner and two others are employees of Respondent-hospital. The theft was committed by them of the total amount of Rs.4500/=, one Dollar and 37 Rials. When the enquiry was made they initially denied the fact, however, later on surrendered the part amount but when it was known that the stolen amount was more, then the petitioner and two others also returned the entire amount. Hence the enquiry was held for misconduct as per the Standing Order for the theft committed by them.

. The Inquiry Officer found them guilty on the basis of available evidence and recommended their dismissal and it was accordingly acted. The matter then proceed to the learned Labour Court. The learned Judge

after hearing both the parties on merits in reference answered in the negative holding that the punishment awarded against the parties was not shockingly disproportionate and therefore, the petitioner was not entitled to the reliefs as prayed for in the reference. Hence the present petition.

3. The learned counsel for the petitioner submitted that the enquiry was not separately held but it was commonly enquired and therefore, it has caused prejudice to the petitioner. However, perusal of the record shows that no prejudice is caused by common inquiry which was single act committed by the petitioner and two others and on that count the petition cannot be entertained at all.

. It was also submitted on behalf of the petitioner that the person, whose purse was stolen, was not examined and therefore, the enquiry is vitiated. However, in this regard it must be noted that the adjudication of the enquiry is dependant upon the quality of evidence and not quantity and when the evidence available was found sufficient, it cannot be said that it stands vitiated for want of examination of

any particular witness especially when available evidence had squarely established the guilt of the petitioner and two others. Similarly, it was submitted that the entire enquiry was conducted in English language and therefore, prejudice is caused to the petitioner and two others. However, in this regard there is nothing on record to show that the defence representative did not know the English language, nor there is any evidence to show that he did not know English nor there is any evidence to show that any objection was raised for conducting enquiry in English language and as such that objection has no merits. Finally my attention was drawn to some minor contradiction in the evidence of two witnesses in respect of quantity of money. However, this is hardly the forum to rebut the evidence in such manner especially when factum of guilt is established beyond reasonable doubt.

4. Finally it was submitted that the court should take into account the 21 years of service rendered by the petitioner and therefore, it should be held that the punishment awarded to the petitioner is grossly disproportionate to the offence committed by him.

However, in this regard, it must be noted that the labour court, for the cogent reasons recorded, has come to the conclusion that the punishment awarded to the petitioner is not shockingly disproportionate and I do agree with the said reasoning recorded by the lower court. Moreover, it is to be noted that it is not quantity of the amount which was stolen but the reputation of the hospital was at stake and therefore, the enquiry officer has rightly recommended the order of dismissal which was upheld by the concerned authority upto to the labour court and therefore, I am not inclined to interfere with this aspect. In these circumstances I find no merits in the petition and therefore, the petition stands dismissed with no order as to costs.